UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

LOIS KAMINSKI, individually and as Administratrix of the Estate of JAMES F. FITZGERALD, deceased,

Plaintiff,

VS.

Index No.: 2013-4916

UNITED STATES OF AMERICA, by and through its officers, agents and/or employees; JOSEPH P. MARKHAM, M.D., individually and as an officer, agent and/or employee of ST. JOSEPH'S HOSPITAL HEALTH CENTER; ST. JOSEPH'S HOSPITAL HEALTH CENTER, by and through its officers, agents and/or employees; JOHN H. SUN, D.O., individually and as an officer, agent and/or employee of ASSOCIATED GASTROENTEROLOGISTS OF CNY, P.C.; ASSOCIATED GASTROENTEROLOGISTS OF CNY, P.C., by and through its officers, agents and/or employees,

Defendants.

Examination Before Trial of JOSEPH P.

MARKHAM, M.D., held on March 15, 2016 at the Law

Offices of MacKenzie Hughes, LLP, 101 South Salina

Street, Syracuse, New York, before Annette S.

Potter, Court Reporter and Notary Public in and for the State of New York.

## APPEARANCES

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## FEDERAL STIPULATIONS

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IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties that the presence of the Referee be waived;

IT IS FURTHER STIPULATED AND AGREED that the witness is to read and sign the transcript, certifying it as to its accuracy and that the filing of the original of this deposition is waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved until the time of trial;

IT IS FURTHER STIPULATED AND AGREED that this Deposition may be utilized for all purposes as provided by the Federal Rules of Civil Procedure;

AND FURTHER STIPULATED AND AGREED that all rights provided to all parties by the Federal Rules of Civil Procedure shall not be deemed waived and the appropriate sections of the Federal Rules of Civil Procedure shall be controlling with respect thereto.

INDEX OF TESTIMONY

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EXAMINATION OF JOSEPH P. MARKHAM, M.D.

BY MR. BOTTAR:

6

		5
<u>Exhibit</u>	INDEX OF EXHIBITS  Description	Page <u>Marked</u>
1 2	St. Joseph's Medical Record	6 6

MARKHAM - BOTTAR 1 (Whereupon, JOSEPH P. MARKHAM, M.D., 2 called as a witness, having been duly 3 sworn, testifies as follows:) 4 (Whereupon, Exhibit No. 1 and 2 were 5 marked for identification, 3/15/16.) 6 7 **EXAMINATION BY** 8 MR. BOTTAR: 9 Good morning, Doctor. We met briefly off 10 the record. My name is Mike Bottar. I represent 11 the patient and the patient's estate. Today I'm 12 13 here to ask you some questions. Hopefully you can answer some or most of them for me. If you don't 14 understand me, would you please tell me? 15 Yes. 16 Α If you answer a question as I've asked it, 17 0 I'm going to assume that you've understood it. Fair 18 19 enough? Α Yes. 20 If you need a break at any time, that's 21 fine with me. I'd ask that if I have a question 22 pending, you answer my question and then take your 23 24 break, okay? Yes. 25 Α

7 MARKHAM - BOTTAR 1 2 Today is open book, so to speak, so you should feel free at any point to refer to the 3 4 records we have here or to something else, if you 5 think you need it, just tell us, okay? Yes, thank you. Α 6 MS. WILLIAMS: Off the record. 7 8 (Whereupon, a discussion was held off the record.) 9 BY MR. BOTTAR: (Cont.) 10 And finally, please use yes, no, whatever 11 12 the answer to the question may be, instead of 13 uh-huhs and head nods, so that the court reporter can take down your testimony, all right? She's the 14 second most important person here. 15 16 Yes. Α I marked as Exhibit 2 what I believe is a 17 0 18 copy of your CV. Generally, is your CV current, so 19 to speak? 20 Α I believe it is. When do you think you last put information 21 into that CV, by sort of year reference? 22 23 Probably within a -- one to two years. 24 Anything significant in terms of your 25 experience from your perspective that's not recorded

8 MARKHAM - BOTTAR 1 on your CV, titles, positions, anything like that? 2 I don't believe so. I think I have it all 3 listed, to my knowledge. 4 And with respect to the print materials, 5 Q your publications, or poster presentations, are they 6 all on there, as far as you know? 7 Yes. 8 Α Thank you for bringing that. That will 9 save us a good chunk of time, so I'll move on, okay? 10 I didn't see, and maybe I just overlooked it, have 11 you ever held a formal faculty position? 12 Yes. 13 Α Where was that and when? 14 SUNY Upstate. 15 Α When did you first hold a formal faculty 16 Q 17 position? Α 1993. 18 And do you hold a formal faculty position 19 Q at SUNY Upstate today? 20 I'm not sure. 21 Q Fair enough. 22 I left to go to St. Joe's, and I think it 23 24 was continued, but I'm not sure. In your capacity as a formal teaching 25 Q

9 MARKHAM - BOTTAR 1 position at SUNY Upstate, did you teach students? 2 Yes. 3 Α Were they residents, fellows? You tell 4 Q 5 me. Medical students are different than 6 Α residents and fellows --7 8 Correct. -- so all of the above. 9 All of the above, all right. At all 10 Q stages of education? 11 12 Yes. 13 At SUNY Upstate, did you teach any 14 mid-level or extender providers? I know I worked with them. I don't know 15 if I taught students at that stage. I have since, 16 but I don't know if I did at Upstate. 17 18 Do you teach in some capacity at Q St. Joe's? 19 20 Α Yes. Formal classroom, didactic training, on 21 the job? You tell me. 22 All of the above. 23 24 What do you teach in terms of the type of 25 providers at St. Joe's?

10 1 MARKHAM - BOTTAR 2 Medical students, dental students, family 3 medicine residents, emergency medicine residents, PA students, nurse practitioner students, nurses, 4 paramedics, EMTs. 5 6 Q At St. Joe's, do you have a class with a 7 title that you teach? Not as -- no, not a continuing class, no. 8 When you teach at St. Joe's, sort of what 9 Q 10 intervals do you do that, where and when, how often? 11 I do bedside clinical teaching every day 12 and class lectures ad hoc every few months. 13 You are licensed to practice medicine by Q the State of New York? 14 15 Α Yes. You were first licensed in 1993? 16 Q 17 Α Yes. 18 Q Have you been licensed continuously since 19 1993? Yes. 20 Α Any limitations, suspension, condition, 21 revocation of your license? 22 23 Α No. Have you ever been licensed to practice 24 Q 25 medicine by any other states?

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11
                       MARKHAM - BOTTAR
 1
 2
         Α
               Yes.
 3
               Where was that?
         Q
               Illinois.
 4
         Α
               When was that?
 5
         Q
               It would have been '92 to '93. '92 and
6
         Α
7
    '93, I believe.
               Is your Illinois license current today?
 8
         Q
 9
         Α
               No.
               Is it what they call inactive?
10
         Q
         Α
              Yes.
11
12
              When it was current or active, were there
         Q
    ever any limitations, suspension, condition, or
13
    revocation?
14
15
               No.
         Α
               Other than New York and Illinois, any
16
         Q
17
    other states?
18
               No.
               You have hospital privileges where today?
19
         Q
               St. Joseph's Hospital, University
20
    Hospital, and I believe Community Hospital
21
    University.
22
             For each of those institutions, are they
23
         Q
    what are called full privileges?
24
25
         Α
               Yes.
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12 1 MARKHAM - BOTTAR 2 Do you hold courtesy privileges at any Q 3 other institutions today? Not that I'm aware of. 4 In 2012, did you hold full privileges at 5 Q Community, University, and St. Joe's? 6 7 Yes. Α Did you hold courtesy privileges anywhere 8 0 in 2012? 9 Not that I'm aware of. 10 Α 11 For anywhere in the world that you have Q 12 held hospital privileges, have they ever been limited, suspended, conditioned, or revoked? 13 No. 14 Α Have you ever been deposed before? 15 Q 16 Α Yes. 17 Q More than once? 18 Α Yes. In one instance was it the Wicks matter? 19 Q 20 Α Yes. Other than the Wicks matter, what other 21 Q occasion? 22 I don't recall the specific names of the 23 Α 24 cases, but they were as expert witnesses. 25 In the State of New York, around the 0

1 MARKHAM - BOTTAR 2 country? You tell me. 3 New York State. Other than Wicks, have you ever given 4 5 deposition testimony as a defendant? 6 Α No. Are you a member of any professional 7 medical organizations? 8 9 Α Yes. 10 Give me an idea of what and when you Q started. 11 12 ACEP, which is American College of 13 Emergency Physicians. I believe I started that in 14 1993, roughly. ABEM, American Board of Emergency Medicine, and I started when I was board certified 15 in '94, I believe. 16 17 Let me stop you there. I apologize for 18 the interruption. With your board certifications, 19 is it one that requires recertification at certain intervals of time? 20 21 Yes. Α 22 Q Is it every ten years --23 Α Yes. -- two years, ten years? 24 Q 25 Α Ten years.

14 MARKHAM - BOTTAR 1 Have you certified every ten years? 2 Q Yes. 3 Α When are you next due to recertify? 4 Q 2014. No, I'm sorry, 2024. 5 Α Approximations are fine. 6 Q 7 2014 is the last time I certified. Α Your board certification or 8 0 recertification, is it one that you could take on an 9 annual basis if you chose to? 10 I don't know. 11 Fair enough. I only want to know what you 12 know. You were first board certified, I think you 13 said, in '93 or '96, somewhere --14 I believe in the '90s. 1994. 15 Α Have you been board certified since you 16 0 were first certified? 17 18 Α Yes. Within your board, do you hold any 19 sub-certifications or subspecialities? 20 21 No. Α If I can flip this around, it's your CV, 22 on the first page at the bottom, are these the 23 professional medical organizations that you have 24 25 participated in or participate in?

15 MARKHAM - BOTTAR 1 2 Α Yes. Okay, perfect. 3 Q MS. WILLIAMS: Just so the record is 4 clearer, looking at the last paragraph of 5 the first page of Exhibit 2. 6 7 It starts Fellow of the American College 0 and it ends with the American Medical Association. 8 Sir, within any of the professional medical 9 organizations, have you ever held a leadership 10 position? 11 Yes. 12 Α In the leadership position or positions 13 Q you've held, did you apply for that, were you 14 invited? You tell me. 15 16 Α Both. 17 Q Fair enough. Which were you invited to 18 participate or hold? I started as Assistant Medical Director at 19 St. Joseph's, and when I became the Director, I'm 20 not -- I don't recall if I was invited or applied 21 22 for it. Maybe both. How long were you in the Director position 23 at St. Joe's? 24 25 Four years.

16 MARKHAM - BOTTAR 1 When to when? 2 0 I believe it was 1999 to 19 -- or 2003. 3 Four years. 4 Director of what, emergency medicine, 5 medical affairs? 6 Medical Director of the Emergency 7 Department. 8 Have you ever served in a quality 9 assurance or peer review capacity at any hospital? 10 11 Yes. Has it ever been at St. Joe's? 12 13 Α Yes. Give me an idea of what you do to stay 14 15 current in your field. I frequently will reference materials 16 while I'm working clinically, and I go to CME 17 evaluations -- or CME courses, and I do CME online. 18 CME meaning Continuing Medical Education. 19 For the CME conferences or seminars, do 20 21 you tend to go to those put on by a particular 22 provider, one versus another? 23 Most of the CME I go to have been courses organized by American College of Emergency 24 Physicians. 25

17 MARKHAM - BOTTAR 1 When did you last go to a conference put 2 Q on by American College of Emergency Physicians? 3 2014. 4 Α Did it address particular topics, a set of 5 0 topics? You tell me. 6 7 It was a board review course. Were there print materials as part of that 8 0 conference? 9 10 Α Yes. Was it a -- sometimes they call it a 11 12 compendium of sorts? Yes, a big notebook with additional 13 14 handouts. Did you review that notebook and handouts 15 0 as part of your preparation for recertification in 16 2014? 17 Most of it. 18 Α You mentioned clinical materials. What do 19 you look at to stay current in the context of 20 clinical materials? 21 We have online resources in the hospital. 22 UpToDate is the name of the review that we often use 23 in the Emergency Department. 24 For UpToDate, do you have your own login 25 Q

18 1 MARKHAM - BOTTAR 2 ID and password? Yes. 3 What I'm trying to determine is if it's 4 yours versus the hospital's, if you know? 5 I don't know. I go to the web page and 6 7 click on UpToDate and --And it works. 8 Q I'm signed onto the computer when I get 9 10 there, so I --Why do you go to UpToDate from time to Q 11 time when you have questions in clinical practice? 12 It's a good general reference. It gives 13 us ideas of things to think about. 14 Are the medical articles or resources 15 Q available through UpToDate peer reviewed? 16 I believe they are. 17 And UpToDate, oftentimes the articles have 18 19 footnotes with references to research materials; is that correct? 20 I believe there is a reference list with 21 every article, yes. 22 When you review materials on UpToDate, do 23 you ever refer to the references and read those 24 25 materials as well?

19 MARKHAM - BOTTAR 1 2 No. Α When you review electronic materials on 3 UpToDate, do you have a custom and practice to print 4 the materials and keep them somewhere? 5 Α No. 6 7 Other than UpToDate, what other materials do you review to stay current in your clinical 8 9 practice? I'll occasionally look at an emergency 10 Α medicine textbook. Tintinalli is a common one. 11 12 Q Any others, other than Tintinalli? 13 As far as textbooks or references? As far as textbooks. 14 Q That's the most common. 15 Α Why do you refer to Tintinalli when you 16 0 do? 17 It's a good general reference. Usually 18 19 I'll refer to it when I'm preparing a lecture. Have you ever taught medical students from 20 the Tintinalli text? 21 I'm not sure how to answer that, but I've 22 used that as a reference to put the lecture 23 24 together. 25 Were you trained in whole or part on the 0

20 MARKHAM - BOTTAR 1 Tintinalli text? 2 We used that as a reference during my 3 Α training, yes. 4 Do you refer to any other print materials 5 Q as one way to stay current in your field? By way of 6 7 example, any journal articles? On occasion. Α 8 When you do refer to journals, what 9 journals do you refer to? 10 Oh, I've looked at the Emergency Medicine 11 12 Journal, occasionally New England Journal of Medicine. I've reviewed some AMA articles. 13 Is the Emergency Medicine Journal the one 14 0 published by your board, who publishes the Emergency 15 Medicine Journal? 16 Right now, I'm not sure if it's ACEP or 17 ABEM. I'd have to look at it. 18 Fair enough. When you refer to that 19 journal, do you have a custom and practice for how 20 you review it, mechanically, cover to cover, 21 particular articles? You tell me. 22 Most of my review nowadays is scanning for 23 specific information, so I don't generally do cover 24 25 to cover.

21 MARKHAM - BOTTAR 1 Is the Emergency Medicine Journal peer 2 Q 3 reviewed? Yes. 4 Α What does peer review mean to you? 5 Q Other experts in emergency medicine have 6 Α 7 reviewed it to fact check information. Have you ever served on a journal 8 0 editorial board? 9 10 Α No. Have you ever served in an editor or 11 editorial capacity for a medicine textbook? 12 13 No. Why do you from time to time refer to the 14 New England Journal of Medicine as one way to stay 15 current in your field? 16 It's usually an article that's been 17 referenced by somebody. Residents always challenge 18 19 us. Like it or not, right? 20 Keep us up to date. And sometimes they'll 21 22 even give me an article. You know the New England Journal of 23 24 Medicine to be peer reviewed? 25 Α Yes.

22 MARKHAM - BOTTAR 1 The AMA journal, do you know what it's 2 Q 3 called? Isn't it AMA? Α 4 Not super important, I just don't want to 5 Q 6 put words in your mouth. 7 I think so. Α Let me try this. The journal published by 8 0 AMA, is it peer reviewed? 9 I believe so, yes. 10 Why do you refer to that journal from time 11 Q to time as one way to stay current in your field? 12 Same reason, using articles referenced. 13 check it out. 14 Do you ever refer to print materials 15 0 published by the American Heart Association as one 16 way to stay current in your field? 17 Α Occasionally. 18 Does your discipline or specialty or 19 board, so to speak, produce something called 20 Clinical Practice Guidelines? 21 Α Yes. 22 Are they published at certain intervals? 23 Q I don't know when they're published. 24 Α When they are published, is it your custom 25 0

23 1 MARKHAM - BOTTAR 2 and practice to review the Clinical Practice Guidelines? 3 Not just because it's published. I use 4 them as a reference. I will look at the Clinical 5 6 Practice Guidelines for a particular reason. Again, 7 putting together a lecture often. Do you believe that Clinical Practice 8 9 Guidelines are an authority relevant to your 10 practice? MS. WILLIAMS: Objection. Go ahead 11 12 and answer. I don't think anything in writing is an 13 authority. It's information to be used by a 14 clinician. 15 16 Q What did you review to prepare for your 17 deposition today, if anything? 18 Α Medical record. I've marked that as Exhibit 1. You, I 19 0 assume, looked at a different copy, because I 20 21 brought Exhibit 1 with me. 22 Α Uh-huh. 23 Generally is whatever you reviewed, does Q it appear to be what I marked as Exhibit 1? 24

It appears to be, at initial glance.

25

24 MARKHAM - BOTTAR 1 2 If during your deposition you believe that Q we don't have a piece of paper, please let me know, 3 okay? 4 Α Yes. 5 We'll try to track that down. Other than 6 7 the patient's medical record from St. Joe's, which I've marked as Exhibit 1, did you review any other 8 9 records for this patient to prepare for today? 10 Α No. By way of example, death certificate, 11 Q autopsy, anything like that? 12 13 Oh, yes, that was in the paperwork that I Α 14 was given. 15 Q I just --16 Α I did look at the death certificate. And I want to be careful so that I don't 17 Q 18 get into an area with any information about your attorney, okay? You reviewed the death certificate 19 to prepare for your deposition today? 20 21 Α Yes. Did you review the cause of death portion? 22 Q 23 Α Yes. 24 Was there writing or text in the cause of Q 25 death portion of the death certificate that you

25 MARKHAM - BOTTAR 1 2 reviewed? Yes. 3 Other than the death certificate and the 4 chart marked as Exhibit 1, did you review any other 5 6 records for the patient to prepare for today? 7 MS. WILLIAMS: Object to the form of the question. Off the record. 8 (Whereupon, a discussion was held off 9 the record.) 10 BY MR. BOTTAR: (Cont.) 11 Can you approximate for me how much time 12 you spent reviewing medical records to prepare for 13 your deposition today? 14 Half an hour to an hour. 15 Are there any records for this patient 16 Q 17 that you would like to review before we proceed with 18 your deposition? No, I don't believe so. 19 Anything occurs to you, just stop me and 20 let me know, okay? 21 22 Α Yes. Who was your employer in February of 2012? 23 Q 24 Α TeamHealth. Other than TeamHealth, did you have any 25 Q

26 1 MARKHAM - BOTTAR 2 other employers in 2012? Don't know if I did any 1090 work or not. 3 How about that. How long have you been 4 Q employed by TeamHealth? 5 Since January 2010. 6 Through your training and experience, have 7 Q you become familiar with signs and symptoms of 8 9 myocardial ischemia? Yes. 10 Α Can there be more than one sign or symptom 0 11 of myocardial ischemia? 12 13 Yes. Α Give me an example of one symptom of 14 myocardial ischemia. 15 16 Α Chest pain. 17 Are you aware of any other symptoms of myocardial ischemia? 18 Yes. 19 Α I can ask or you can list, however is 20 Can you give me all of them that you can 21 fastest. think of now? 22 Yes. So if you have chest pain, shortness 23 of breath, generalized symptoms, nausea, sweating. 24 There can be chest burning. There can be just 25

27 MARKHAM - BOTTAR 1 2 generalized fatigue, weakness. I've seen patients with almost any complaint that has myocardial 3 infarction for ischemia that it's hard to tell 4 whether they're related or not, but the most common 5 complaints I've mentioned. 6 You should assume from my questions today 7 that they all refer to men, not women, as I 8 understand women can present differently. 9 Well, men and women, the majority of the 10 time, have the similar symptoms, but women tend to 11 have separate symptoms sometimes, as men sometimes 12 also have separate symptoms. 13 You mentioned shortness of breath. Can 14 difficulty breathing be a sign or symptom of 15 myocardial ischemia? 16 17 Yes. Do you differentiate signs and symptoms of 18 myocardial ischemia from coronary artery disease? 19 Yes. 20 Α Are you familiar with signs and symptoms 21 of coronary artery disease? 22 Well, that's a complicated answer. 23 Α 24 Okay. Why is that? Q

Coronary artery disease is a process.

Ιt

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28 MARKHAM - BOTTAR 1 2 may not have any signs or symptoms. So if they have signs or symptoms, it could be secondary to coronary 3 artery disease, but you can have coronary artery 4 disease without any signs or symptoms. 5 Fair enough. Let me fix my question. Are 6 Q 7 you familiar with signs or symptoms of symptomatic coronary artery disease? 8 9 Yes. Α Can you tell me what they are? 10 Sometimes it's a chest pain or shortness 11 of breath. It could be fatigue. It could be 12 exertional angina or chest pain with exertion. 13 could be shortness of breath with exertion. 14 lead to congestive heart failure even, if it affects 15 16 the cardiac output. Weakness. Nausea? 17 Q Nausea, sweating, sympathetic symptoms. 18 Can lightheadedness be a sign or symptom 19 of symptomatic coronary artery disease? 20 It could be, yes. 21 Can lightheadedness be a sign or symptom 22 23 of myocardial ischemia? Yes, it could be. 24 Α

Were you working on February 6th, 2012?

25

Q

29 MARKHAM - BOTTAR 1 2 Α Yes, I was. Either from your memory or your review of 3 Q records to prepare for today, do you know what day 4 of the week February 6th, 2012 was? 5 Α I do not. 6 Please assume that it was a Monday. 7 Α Okay. 8 Was it customary for you to work 9 particular days of the week at St. Joe's in February 10 of 2012? 11 No. 12 Α Tell me sort of the hours you worked at 13 St. Joe's in February of 2012, shifts, days of the 14 week, whatever you remember. 15 I don't remember my specific schedule, but 16 our schedules varied. We worked days, evenings, and 17 night shifts rotating. No particular pattern. 18 In 2012, so a broad question, did you have 19 average number of hours a week -- number of hours 20 you worked a week in the Emergency Department in 21 Central New York? 22 I'm sure I did. 23 Α Can you give me an idea, 40, 50, 60? You 24 25 tell me.

30 1 MARKHAM - BOTTAR 2 Probably 30 to 40. Α 3 In 2012, were the hours all at St. Q Joe's --4 5 Yes. Α 6 -- at more than one -- yes, okay. 7 Generally, I know we're going back a bit in time, how would you know when you were scheduled to work 8 in February of 2012? By way of example, was it a 9 calendar, something like that? 10 We have an online schedule. 11 In February of 2012, did you take call? 12 Q No. We didn't have call. 13 Okay. Do you have a memory of the patient 14 Q census at St. Joe's in the ED on February 6th, 2012? 15 16 Α No. 17 Either from your memory or your review 18 of records to prepare for today, have you identified 19 the time that you were first bedside with Mr. Fitzgerald on February 6th? 20 I need to refer to the record, this one. 21 It appears approximately 12:40. 22 Help those far away at this table follow 23 along with what page you're looking at. Can you 24 25 reference in the top right-hand corner of the

31 MARKHAM - BOTTAR 1 document you're looking at in Exhibit 1? 2 Page 1 of 9. 3 Is there a particular point or section on 4 that page that tells you when you were first bedside 5 with Mr. Fitzgerald? 6 Vital signs, alert reviewed. It has my 7 name and then 12:40. So that would be what I do 8 just as I'm heading in to see the patient. 9 When did Mr. Fitzgerald first present to 10 St. Joe's on February 6th? 11 According to the facesheet, the first page 12 in Exhibit 1, he was signed in at 12:01 p.m. in the 13 afternoon. 14 How did he present or arrive to St. Joe's 15 Q on February 6th, how did he get there? 16 I don't know. 17 Please review Page 1 of 9 contained within 18 Exhibit 1. 19 Okay. Arrival mode, the patient was 20 brought into the ED on a stretcher. Transport mode, 21 22 ambulance. Can the manner in which a patient is 23 transported to the Emergency Department be a finding 24 of usefulness to treatment? 25

MARKHAM - BOTTAR 1 Not necessarily. 2 Α Does it mean anything to you as a provider 3 Q one way or the other whether a patient walks in 4 versus they're brought in by ambulance, generally? 5 6 Α No. 7 Before you were first bedside with Mr. Fitzgerald at around 12:40, did you review any 8 of the hospital record for the treatment he received 9 between approximately noon and when you saw him at 10 12:40? 11 12 I don't recall. Was it your custom and practice at the 13 time to review the patient's hospital record in the 14 ED, to the extent it existed, before you were first 15 bedside with a patient? 16 17 Yes. Would you customarily review nursing 18 19 notes? Yes. 20 If there was an ambulance run sheet in the 21 record, would it be your custom and practice to 22 review that as well? 23 24 Yes. Why customarily would you review nursing 25 Q

## MARKHAM - BOTTAR

notes before first providing care and treatment to a patient in the Emergency Department?

A It gives me an idea of why the patient is there and begins my thought process of the care necessary.

Q Why customarily would you review an ambulance run sheet, to the extent it existed?

A To see if there's any pertinent information from the EMS where the -- and to find out where the patient came from, home or someplace else.

Q Either from your memory or review of records to prepare for today, can you tell me whether there were nursing entries in the ED record for Mr. Fitzgerald before you were first bedside?

A There's a triage note here, which is before I was -- before 12:40.

Q Let me sort of try to short circuit this, so I don't keep you here all day. Are there vital signs in the ED record before you were first bedside?

A Yes.

Q Does there appear to be an assessment of systems in the record before you were first bedside?

MARKHAM - BOTTAR 1 MS. WILLIAMS: Objection. Go ahead 2 and answer. 3 Yes. 4 Α Does it appear that a healthcare provider 5 Q interacted face-to-face with Mr. Fitzgerald before 6 7 you were first bedside? Yes. Healthcare provider meaning a nurse? 8 Yes, sir. Do you have a memory of 9 reviewing the entries generated in the hospital 10 record before you were first bedside at or about the 11 time you first treated Mr. Fitzgerald on the 6th? 12 No, I have no recollection of this 13 interaction. 14 Would it have been your custom and 15 practice to review the record, and specifically the 16 family history portion of the record, before you 17 first provided care and treatment to a patient in 18 the Emergency Department? 19 Α Yes. 20 Why is that? 21 Q MS. WILLIAMS: Objection. Go ahead 22 and answer. 23 To get information about the patient. 24 Α 25 How can family history be -- withdrawn. Q

35 1 MARKHAM - BOTTAR Can family history be an important piece of 2 information to diagnosis and treatment? 3 Yes. 4 Α Can it inform a practitioner's risk 5 assessment for a patient? 6 7 Yes. Α Did Mr. Fitzgerald have any family history 8 recorded in the record that was pertinent to risk 9 assessment for cardiac disease? 10 Yes. I believe there's past medical 11 history documented here before I saw him -- or I 12 should say before 12:40. 13 Fair enough. What was entered in the 14 record at around 12:33 with regard to family history 15 next to cancer column? 16 17 Where do you see that? Sure. 18 Q Family history: Cancer, heart disease, 19 20 father died at age 29 of MI. Were you aware of that information before 21 you first provided care and treatment to Mr. 22 Fitzgerald on February 6th? 23 I don't recall that, but I would have 24 25 looked at this.

36 MARKHAM - BOTTAR 1 2 It would have been your custom and practice to review the information next to this 3 field, correct? 4 5 Α Yes. 6 Can family history of heart disease increase a patient's risk factor for heart disease? 7 Yes. 8 Α When you first saw Mr. Fitzgerald on 9 February 6th, were you aware of his age? 10 It was in the medical record, so I would 11 12 have, yes. Is that something you generally take note 13 Q of? 14 Yes. 15 Α 16 Q You knew that day that he was 39 years 17 old? 18 Yes. What was his chief complaint to you? 19 Q Patient presents with complaint of chest 20 pain. 21 Are you referring to the History of 22 Present Illness section on Page 3 of 9 of Exhibit 1? 23 24 Α I am. 25 Do you have a memory of speaking with Q

37 MARKHAM - BOTTAR 1 Mr. Fitzgerald when you were first bedside at around 2 12:40 on February 6th? 3 No, I don't recall that interaction. 4 I make a correction here? 5 Sure, please do. 6 7 My HPI was noted to have been done at 12:38, so I would have actually seen him before 8 12:38 long enough to get this history and then sit 9 down and type this, so 12:40 was probably not 10 11 accurate. 12 O Fair enough. I had to have seen him before that to get 13 this record. 14 MR. BOTTAR: Can we go off? 15 MS. WILLIAMS: Sure. 16 (Whereupon, a discussion was held off 17 the record.) 18 19 BY MR. BOTTAR: (Cont.) Doctor, I directed your attention to a 20 timestamp next to your name at 12:13, does that mean 21 anything to you? 22 Yes. That's probably the actual --23 accurate time that I first saw the patient. 24 Based on either your memory or the notes 25 Q

## MARKHAM - BOTTAR

you have, can you approximate how much time you spent with Mr. Fitzgerald when you were first bedside on the 6th?

A Based on the medical record, if I first went to see him at 12:13 and I documented my HPI note at 12:38, that time would have been spent with him.

- Q Through your training and experience, have you become familiar with the use of quotations in a patient's medical record, quotes around words?
  - A Yes.

- Q What do quotes around words mean to you, generally?
  - A Somebody wants you to see that.
- Q Have you ever used quotes around words or phrases when you are attempting to quote the patient?
  - A Yes.
- Q When you were first bedside with Mr. Fitzgerald on February 6th, did he use the words chest pain?
- A I don't recall what he actually said to me. I can only refer to the medical record.
  - Q When he -- withdrawn. When you were first

39 1 MARKHAM - BOTTAR bedside with Mr. Fitzgerald, did he make any 2 3 gestures with his hands with regard to what he was describing the sensation to be? 4 I don't recall that interaction. 5 Have you ever provided care or treatment 6 7 to patients complaining of chest pain and seen them use their hand in some fashion to describe the 8 location and nature of the pain? 9 10 Yes. Have you ever seen them use a finger to 11 12 point where the pain is located? 13 Yes. Have you ever seen them use a fist or a 14 palm to point to the location of the pain? 15 Yes. 16 Α 17 Does the digit or the way the hand is used 18 mean anything to you as a provider? I take note of it. 19 Α And why is that? 20 Just I generally observe the patient's 21 behavior. 22 Is there any information in the record 23 with regard to whether Mr. Fitzgerald was pointing 24 25 or using a fist or a palm of his hand to describe

40 MARKHAM - BOTTAR 1 2 the sensation when you were first bedside? I need to review the record here. 3 Please do. 4 I don't see a reference in the HPI to any 5 particular hand pattern. 6 Are you familiar with medical literature 7 that speaks to when a patient points, it tends to 8 not be cardiac origin pain, or when they use a fist 9 or a palm, it tends to be cardiac origin pain? 10 MS. WILLIAMS: Objection to form. 11 I'm not aware of that. 12 Did you ask Mr. Fitzgerald questions when 13 Q you were first bedside? 14 15 Yes. What questions did you ask him about his 16 17 chest pain? Well, I can't tell exactly what I asked, 18 but I can tell you what the answers were. 19 Fair enough. Let me try it this way. Did 20 you ask him what he was doing when he first 21 experienced chest pain? 22 I don't recall what I asked him. 23 Is it your custom and practice to ask a 24 patient what they were doing when they first 25

41 1 MARKHAM - BOTTAR experienced chest pain? 2 Typically, yes. 3 Can what a patient is doing at the time 4 they first experience chest pain be relevant to 5 diagnosis and treatment? 6 7 MS. WILLIAMS: Objection. Go ahead and answer. 8 9 Α It may. By way of example, seated, non-exertional 10 chest pain versus activity chest pain, that can 11 inform the treatment plan? 12 It's information, yes. 13 Did you ask Mr. Fitzgerald to describe the 14 character or nature of the chest pain? 15 MS. WILLIAMS: Objection. 16 I don't recall what I asked him. 17 Are you familiar with describing character 18 or nature of chest pain? 19 Objection. MS. WILLIAMS: 20 I'm sorry, can you explain your question? 21 In your practice, have you ever 22 0 Sure. asked a patient to describe the character of their 23 24 chest pain? 25 Yes.

42 1 MARKHAM - BOTTAR 2 When you do so, do you ever provide them 0 with examples for them to pick from, so words to 3 choose from, so to speak? 4 I'll start with an open-ended question, 5 Α and if they're confused, then I will offer them 6 7 examples. When you offer examples, what examples do 8 9 you offer? MS. WILLIAMS: Objection. 10 I would offer -- typically would offer, 11 "is it heavy, is it tightness, is it squeezing, does 12 it feel like pressure or burning?" I usually ask 13 about burning. 14 Can the character of a patient's chest 15 pain be a piece of information useful to treatment 16 17 and diagnosis? Yes, it may be. 18 Did you ask Mr. Fitzgerald whether his 19 chest pain was constant, whether it waxed and waned? 20 You tell me. 21 Objection. 22 MS. WILLIAMS: I don't recall what I asked him. 23 24 Does the note provide any information 25 about what he was asked?

43 MARKHAM - BOTTAR 1 2 MS. WILLIAMS: Objection. MR. BOTTAR: What's the basis for the 3 4 objection? MS. WILLIAMS: He's already said he 5 doesn't know what he asked. This is -- he 6 7 already explained that this would be the answer given. 8 9 MR. BOTTAR: Agreed. Can you extrapolate from the answers given 10 Q 11 the questions you asked? 12 I would be guessing. 13 I don't want you to guess. When did he first experience chest pain, according your note? 14 He states he has been having some chest 15 tightness when going out into the cold air for the 16 last few days. 17 When you treated him that day, did you 18 19 distinguish a difference between his complaint of 20 chest pain and his complaint of chest tightness? I don't know that I can answer that. I 21 don't know what I was thinking at the exact time. 22 23 Did you ask him questions about passing 24 out after intercourse? 25 MS. WILLIAMS: Objection.

44 MARKHAM - BOTTAR 1 I don't recall what I asked him. 2 Α Does the note provide information about 3 0 passing out after intercourse? 4 Yes, it does. States --5 Α MS. WILLIAMS: You answered the 6 7 question. THE WITNESS: Oh, sorry. 8 MS. WILLIAMS: That's okay. 9 Does the note provide any information 10 11 about when he passed out after intercourse? 12 Yes. Was intercourse complete when he passed 13 out, had he had an orgasm? 14 MS. WILLIAMS: Objection. 15 I don't know. 16 Α Did you ask any questions about whether 17 intercourse was strenuous? 18 MS. WILLIAMS: Objection. 19 I don't recall what I asked him. 20 Α What is diaphoresis? 21 Q 22 Α Sweating. When you were first bedside with Mr. 23 Fitzgerald, was anyone else present other than you 24 25 and him?

45 MARKHAM - BOTTAR 1 I don't recall. 2 Α If someone else was present other than you 3 0 and him, would you have recorded it in the record? 4 I probably would have referred to that 5 Α person if they had stated something. 6 7 Did you have a custom and practice in February of 2012 to write in the record if someone 8 other than the patient was the source of information 9 about the patient? 10 Α Yes. 11 Do you see any entries like that in this 12 Q record? 13 Yes. 14 Α What does it say? 15 0 His girlfriend states -- do you want me to 16 Α 17 continue that? 18 Q Sure. Okay. His girlfriend states: He was out 19 Α for about 1.5 minutes. Do you want me to keep 20 reading? 21 No, that's fine. Do you have a memory of 22 0 any questions or conversation you had with his 23 girlfriend when you were first bedside? 24 No, I don't recall this interaction. 25

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MARKHAM - BOTTAR 1 After speaking -- when speaking with the 2 Q girlfriend, did you then confirm the information 3 with the patient? 4 I don't recall. 5 Would it have been your custom and 6 7 practice to do so? Yes. 8 Α Does your note provide any information 9 about whether you queried the patient about whether 10 this was the first time he had experienced chest 11 pain like this? 12 MS. WILLIAMS: Objection. 13 I'll review the note. There is two 14 comments about his chest tightness. Nothing 15 specifically states chest pain, other than stating 16 17 that when he passed out, he had no CP or short --SOB. 18 Let me back you up to Page 2 of 9 of 19 Q Exhibit 1. 20 21 Okay. Nine or ten lines down begins, "Patient 22 complains of." Do you see that? 23 Page 2 of 9? 24 Α 25 Yes, sir. Q

47 MARKHAM - BOTTAR 1 2 Yes, I see it. Α Please review that paragraph to yourself. 3 Q Okay. Okay. 4 Was this information in the patient's 5 Q 6 record when you were first bedside with Mr. 7 Fitzgerald on the 6th? I'm thinking probably not, because it's 8 documented 12:32, which is after my initial contact 9 with him. 10 Who's RD? Who is Ryan Donahue? 11 Q Donahue is a registered nurse in the 12 Emergency Department. 13 Was it custom and practice in February of 14 2012 for the RN to take a history from the patient 15 16 after the patient was first seen by the ED 17 physician? 18 MS. WILLIAMS: Objection. MS. HAYES: Objection to form. 19 I can't speak to what the nurses do. 20 Α Was Mr. Donahue bedside with you when you 21 were first bedside? 22 I don't recall. 23 24 Would it have been your custom and 25 practice to review the information in this field at

48 MARKHAM - BOTTAR 1 some point while Mr. Fitzgerald was a patient in the 2 3 hospital on February 6th, 2012? Yes. Α 4 You would have known at some point that 5 Q day that he had complaints of three days of chest 6 7 pain, correct? MS. WILLIAMS: Objection. 8 MR. BOTTAR: What's the basis of the 9 objection? 10 MS. WILLIAMS: He said he doesn't 11 12 have a specific recollection of this 13 patient. MR. BOTTAR: That doesn't mean he 14 can't answer questions. It's in the 15 chart. I'm asking what the chart says. 16 17 Q Would you have been aware of that 18 information when you saw him that day at some point in time? 19 At some point, yes. 20 Would you have been aware that he had 21 complaints of moderate chest pain? 22 What I would have been aware of is the 23 history that I took and documented with the patient. 24 25 Different people can reference the same thing

49 MARKHAM - BOTTAR 1 differently, so my role is to clarify that with the 2 3 patient. Fair enough. Did you clarify the 4 0 information recorded by Mr. Donahue with 5 Mr. Fitzgerald? 6 7 According to my note, he didn't tell me chest pain. I documented chest tightness. 8 What is the first -- what are the last two 9 words in the first sentence under your history of 10 present illness? 11 12 Patient complains of the complaint of chest pain. 13 Were those his words? 0 14 MS. WILLIAMS: Objection. Go ahead. 15 You can answer it. 16 That line usually comes from the chief 17 complaint that they present in with, not his words. 18 Would it have been your custom and 19 practice to follow up on information recorded by 20 another healthcare provider in the patient's record 21 about complaints of chest pain? 22 I don't understand the question. 23 The information recorded by Mr. Donahue at 24 12:32 on February 6th, would it have been your 25

50 MARKHAM - BOTTAR 1 custom and practice to review that information, you 2 3 to review it? Yes. 4 Α Would it have been your custom and 5 0 practice to review that information with Mr. 6 Fitzgerald at some point while he was in the 7 Emergency Department? 8 I do my H&P. That's when I communicate 9 with the patient about signs and symptoms. 10 11 Slightly different question, though. Would you have reviewed what Mr. Donahue wrote with 12 Mr. Fitzgerald at some point while he was in the 13 14 Emergency Department? I may not have. 15 Did you place hands on the patient at some 16 Q point, perform a physical examination? 17 18 Α Yes, I did. Was it a comprehensive physical exam, a 19 problem-oriented exam? You tell me. 20 Probably somewhere in-between. It was a 21 generalized limited exam? 22 What do you mean by generalized limited 23 exam? 24 25 I'll do usually the heart, chest, abdomen, Α

51 1 MARKHAM - BOTTAR musculoskeletal system, skin systems, and you know, 2 make general references to the patient's alertness, 3 mental status, neurologic stability with how he 4 walks, moves his hands, speaks. 5 During that evaluation and specifically 6 with regard to the cardiovascular system, would you 7 use a stethoscope to listen to the heart? 8 9 Α Yes. Was it your custom and practice to check 10 0 pulses, all four extremities? 11 Yes. 12 Α Did you record any findings following your 13 generalized limited exam in the record that are 14 outside of normal limits? 15 I'm sorry, did you ask if -- did I record 16 Α 17 anything? 18 Yes, sir. Q You mean anything abnormal? 19 Α Sure, anything abnormal. 20 Q He had wheezing. 21 Α How did you -- withdrawn. Was the 22 Q 23 wheezing audible? I don't know if it was heard without a 24 25 stethoscope.

52 MARKHAM - BOTTAR 1 What does bilateral wheezing mean 2 Okay. Q to you, if anything, on this patient? 3 It means I heard wheezing in both sides of 4 Α his lungs, right and left. 5 Does the note provide any information 6 Q about the location of the wheezing in terms of 7 lobes? 8 It just says wheezing bilaterally. 9 Α What are rhonchi? 10 Q Rhonchi are sounds that are heard in the 11 Α chest. 12 What can rhonchi be a sign and symptom of? 13 Q It could be fluid rattling. 14 What does the word "absent" next to 15 0 16 rhonchi mean to you, if anything? 17 He had no rhonchi. Following the history you took and the 18 physical exam you performed, did you form a 19 differential diagnosis for Mr. Fitzgerald's 20 complaints that day? 21 I'm sure I did. 22 Did you write a differential diagnosis in 23 24 the record? I don't see that I documented differential 25

53 MARKHAM - BOTTAR 1 diagnosis prior to making my diagnosis. 2 What was your diagnosis? 3 Syncope, vasovagal, dehydration, 4 interactive airway disease, wheezing. 5 Before making your diagnosis, did you 6 Q 7 order any tests for Mr. Fitzgerald? Yes. 8 What tests did you order for Mr. 9 10 Fitzgerald? I ordered an EKG, blood tests. Α 11 What blood tests did you order? 12 Q I'm looking through the list now. 13 see. Cardiac troponin, troponin I, complete blood 14 count with differential, comprehensive metabolic 15 16 panel, and then the cardiac troponin is listed again, but we probably only did the one test. 17 Magnesium and EKG. 18 Let me start with the CBC blood test. Why 19 did you order a CBC? 20 Looking for any signs of reactive 21 component and anemia. 22 Did you order a CBC for any reasons other 23 than the two you just gave us? 24 I can't recall specifically what I was 25

54

MARKHAM - BOTTAR 1 2 thinking at the time. Why did you order a comprehensive 3 Q metabolic panel? 4 Looking for general metabolic function in 5 Α the body, electrolytes, kidney function. And the 6 7 comprehensive panel also gives me a scan of the liver function. 8 Did you order a CMP for any other reasons? 9 I don't recall any other. I don't recall 10 what I was thinking at the time. 11 Why did you order a troponin I? 12 Troponin I is looking for cardiac injury. 13 It's released with cardiac injury, so I'm looking 14 for any metabolic or chemical evidence of cardiac 15 16 injury. 17 Did you order a troponin I for any other Q reason? 18 I don't recall what I was thinking at the 19 Α time. 20 Why did you order magnesium? 21 Q Magnesium is ordered as part of our 22 Α cardiac evaluation. 23 24 Q Why is that? Magnesium is a significant component in 25

55 1 MARKHAM - BOTTAR 2 muscle contractility in cardiac arrhythmias. Did you order a test called creatinine 3 Q kinase? 4 Creatinine kinase? 5 Α 6 Q Yes. Yes, sir. 7 Α I don't see that that was separately 8 ordered. 9 Q Have you ever ordered that test as part of a cardiac evaluation? 10 11 Many years ago. Do you -- withdrawn. Was the last time 12 Q 13 you ordered a CK many years ago? For a cardiac evaluation, yes. 14 15 What do you order now in lieu of or in 16 place of CK? 17 We're looking for muscle injury in 18 somebody who may have been -- has significant muscle 19 injury. Laying on the floor all night, as an 20 example. For the troponin I, do you have a general 21 22 understanding of the results of a troponin test --23 troponin I test? 24 Do I know his results or do I understand 25 the results of a troponin I?

56 1 MARKHAM - BOTTAR 2 Q Generally. Generally, yes. 3 Α Troponin is a protein of sorts? 4 Q I think of troponin as a cardiac enzyme. 5 Α 6 Q Do you have a general understanding of 7 timing for release of the troponin cardiac enzyme following cardiac necrosis? 8 9 Yes. What's your general understanding of when 10 that marker typically first presents hours after 11 cardiac necrosis? 12 Well, I mean, to be specific, you always 13 have a troponin I number, but I think what you're 14 asking is, is it elevated or abnormal. 15 16 Q Sure, whatever way you want to answer that. 17 18 So typically anywheres from immediately to four hours is a typical timeframe that we see a 19 troponin elevated after cardiac injury. 20 Are you aware of a typical time at which 21 the cardiac troponin peaks hours after cardiac 22 23 injury? 24 Α Generally. 25 Okay. Is it roughly 24 hours after Q

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57
                       MARKHAM - BOTTAR
1
    cardiac injury?
2
              I think it's 12 to 24 hours. Everybody is
3
         Α
    a little bit different.
4
              Fair enough. Different schools of
5
    thought.
6
7
         Α
              Right.
8
              I appreciate that.
         Q
9
                    MS. WILLIAMS: Can I take a quick
              break?
10
                    (Whereupon, a short recess was
11
              taken.)
12
    BY MR. BOTTAR: (Cont.)
13
              Why did you order an EKG?
14
         Q
              Looking for cardiac arrhythmias or
15
16
    abnormalities.
              Was a reason you ordered an EKG Mr.
17
    Fitzgerald's complaint of chest pain?
18
              Yes.
19
              Were you made aware of the results of the
20
    labs you ordered?
21
              I looked at them.
22
              Tell me generally how that works, and by
23
    way of example, are you provided a print copy, is
24
    there an alert on a computer screen? You tell me.
25
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## MARKHAM - BOTTAR

How do you know when --

A It's an electronic record, so I look on the computer screen.

Q Is there typically a field or a location where it provides or reports that a lab result is complete and been returned?

A In our current medical record, which was also used in 2012, I don't think there's an alert that's in there, but I check them regularly.

Q At that time was there any component of the St. Joe's electronic medical record that contacted you wirelessly in your phone to alert you about results?

A No.

Q Did you review the lab work as part of your prep for deposition today?

A Yes.

Q Let's start with the troponin. I've got some basic questions about that. What do you understand a point-of-care troponin to be and whether it's different than a draw troponin, what do you know about POC troponin?

A The tests today are very sensitive, so the point-of-care troponin is a rapid test.

59 MARKHAM - BOTTAR 1 Is it a fingerstick, so to speak? 2 Q Well, they can get it from a blood tube or 3 Α a fingerstick, yes. It could be a fingerstick. Ι 4 don't think they do it that way at St. Joe's. I 5 think they take it off the blood tube. 6 What time was the troponin result complete 7 Q to report it out? 8 It shows on the record here at 13:58. 9 Was there a nonfinal or preliminary 10 troponin that you reviewed prior to 13:58? 11 I don't recall. 12 Only if you know. This is the only one I 13 0 have in the record, so if you have a separate 14 15 memory, tell us. 16 Α I don't. What was the result of the troponin I? 17 Q It was in the normal range. 18 Α Was there any troponin in Mr. Fitzgerald's 19 Q system on February 6th? 20 21 Α Yes. What does .06 mean to you, if anything? 22 Q It means it's in the normal range. 23 Α In your experience, do patients -- can 24 Q patients without cardiac damage have a troponin that 25

60 MARKHAM - BOTTAR 1 is above zero? 2 3 Α Yes. What is the etiology of a troponin above 4 zero without cardiac damage? 5 That's not clear. We see it in renal 6 Α 7 failure patients frequently. Was Mr. Fitzgerald in renal failure? 8 Q I don't believe so. 9 Α Do you see it in other patients, so a 10 0 11 troponin above zero in patients without cardiac 12 damage? 13 Α Yes. What other patients? 14 Q We see it pretty regularly whenever we 15 Α 16 test it. It appears the result is 13:58. Either 17 Q from your memory or review of records, when was the 18 19 blood drawn? I'm not sure I can tell what time. 20 see. Collected -- blood collected at 13:25 and for 21 the troponin it says 13:36. 22 Between the time that Mr. Fitzgerald 23 Q 24 presented to St. Joe's at around noon and 13:36, what was his troponin I result? 25

61 MARKHAM - BOTTAR 1 2 0.06. Α Before you have that result, so for the 3 4 first hour and a half or so he was at the hospital, 5 what was his troponin? I don't know. 6 Α 7 After 13:58 until discharge, what was his Q troponin? 8 I don't know. 9 Α 10 What are serial troponins? 0 11 Α Those are troponins you do over time --12 Q And --13 -- separated by hours. Α 14 How many hours typically for separation 0 15 between troponins when ordering serial troponins? 16 It depends on what you're looking for and Α It could be anywheres from two hours 17 who you are. to six hours to twelve hours. 18 19 Have you ever ordered serial troponins? Q 20 Α Yes. Did you consider ordering serial troponins 21 Q 22 for Mr. Fitzgerald? 23 Α No. 24 What was the significance, if any, to your 25 diagnosis and treatment plan for Mr. Fitzgerald of

62 1 MARKHAM - BOTTAR his .06 troponin result? 2 3 I reviewed him for follow-up cardiac evaluation. 4 Is there an entry in the record that tells 5 Q you, you referred him for cardiac evaluation? 6 7 Not directly, that I can see. Do you have a memory separate from the 8 0 record? 9 No. Cardiac evaluation is part of a 10 11 syncope workup, so there's a referral for syncope 12 that would have included cardiac evaluation in my 13 mind. Did you ever tell Mr. Fitzgerald on 14 February 6th that in your mind you were referring 15 him for a cardiac evaluation. 16 I don't recall any interaction with him. 17 Were there any results outside of normal 18 19 limits for the complete metabolic panel? Yes. 20 Α What results were outside normal limits? 21 0 The glucose was listed as high at 100 and 22 the calcium is listed as being low at 8.1. 23 Did those results inform your treatment 24 25 plan for Mr. Fitzgerald --

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63
                       MARKHAM - BOTTAR
 1
 2
         Α
               No.
 3
               -- on the 6th? Did you review the results
         Q
    of the CBC with diff?
 4
 5
               Yes.
         Α
               By review, reviewed while he was in the ED
 6
7
    on the 6th?
               I don't recall.
 8
 9
               Would it have been your custom and
         0
    practice?
10
11
         Α
              Yes.
12
              Was he anemic on February 6th?
         Q
13
         Α
              He would not have been classified as being
    anemic.
14
15
         0
              How do you define anemic?
16
         Α
              Anemia is a significant drop in the
17
    hematocrit, or percentage of red blood cells.
18
               Was the result for the red blood cells
    outside of normal limits?
19
               Outside of the reference lab's limits.
20
                                                         Ιt
21
    was listed as 40, yes, listed as being low.
22
               Were the results for the hematocrit
         Q
    outside of normal limits?
23
24
               That was the hematocrit, 40, yes, as
25
    listed as low.
```

64 1 MARKHAM - BOTTAR 2 Is a patient with low hematocrit and low Q red blood cells anemic? 3 MS. WILLIAMS: Objection. 4 I wouldn't consider 40 as being anemic. 5 Α Where is your threshold? 6 Q 7 Α Definitely down into the 30s I might 8 consider anemia. 9 Did you consider anemia for Mr. Fitzgerald 10 on February 6th? 11 Α No. 12 Were you aware of an association between Q 13 anemia and heart attack? 14 Α Yes. 15 Q Do you know any of the statistics? 16 Α No. 17 Q Did you discuss with Mr. Fitzgerald the 18 results of his CBC on February 6th? 19 I don't recall. 20 Did you tell him that patients with anemia 21 are at 41 percent greater risk of heart attack than 22 those without anemia? 23 I don't recall my interaction with him. 24 Did the results of the CBC inform your 25 treatment plan for Mr. Fitzgerald on February 6th?

65 MARKHAM - BOTTAR 1 What do you mean by inform? 2 Α Did you take those results into 3 Q consideration and provide any care or treatment to 4 him based upon the results? 5 I saw the results and found them to be 6 7 inconsequential. The result of the magnesium was within 8 normal limits? 9 I'm not seeing the results of magnesium in 10 11 this paperwork. Here it is. I have it. 1.7, that 12 was within normal limits. 13 We've gone through the labs. We can move 0 quickly through the medicine orders. You prescribed 14 DuoNeb. 15 16 Α DuoNeb, yes. 17 What is that? Q It's a nebulized treatment of albuterol 18 and Atrovent. 19 Why did you prescribe that? 20 Q 21 He had wheezing on exam. It suggested a 22 bronchospasm, and these are bronchodilators and 23 drying agents. 24 How was the DuoNeb administered to 25 Mr. Fitzgerald?

66 MARKHAM - BOTTAR 1 Well, I don't -- didn't see it given to 2 Α him. 3 Does the record tell you whether it was 4 Q given to him? 5 Probably. So DuoNeb, one vial, was 6 Α nebulized. 7 That's inhaled in some fashion with 8 moisture, yes, nebulizer? 9 Yes, little device makes the liquid in 10 small droplets. It can be inhaled. 11 12 Did you assess or examine Mr. Fitzgerald after he received DuoNeb by a nebulizer? 13 I don't recall the interaction. 14 15 Is there any information in the record 16 that tells you one way or the other whether you were 17 informed about the results, if any, of the DuoNeb administration? 18 19 The respiratory therapist documented he tolerated it well, but I don't recall being told by 20 21 the respiratory therapist anything. You also prescribed saline, normal saline? 22 Q 23 Α Yes. Did you prescribe albuterol? 24 Q 25 Α Yes.

67 MARKHAM - BOTTAR 1 Why did you prescribe albuterol? 2 Q I believe that was an inhaler for him to 3 Α go home with, because of his bronchospasm. 4 Was he administered albuterol in the 5 Q 6 Emergency Department? 7 As part of the DuoNeb, he was. You prescribed prednisone? 8 Q 9 Α Yes. Why did you prescribe prednisone? 10 Q 11 As treatment for his reactive airway Α 12 disease. 13 Did he receive prednisone in the Emergency Q Department? 14 I'd have to see if there's a nurse's note. 15 Α That was ordered. 16 17 Q Did you order it? 18 Yes, I did. Α Was your expectation that he would receive 19 0 it if you ordered it? 20 21 Yes. Α Did you prescribe DuoNeb, albuterol, and 22 23 prednisone for your presumptive diagnosis of 24 reactive airway disease? 25 Α Yes.

68 MARKHAM - BOTTAR 1 Did you prescribe those medications for 2 0 any reason other than reactive airway? 3 I don't recall my interaction or what I 4 was thinking at the time. 5 6 Is that what you customarily prescribe Q those medications for? 7 Α Yes. 8 Did you review the EKG tracing? 9 Q Yes. 10 Α Did you review the unconfirmed EKG 11 0 tracing? 12 Yes. 13 Α Do you have a --14 Q What do you mean unconfirmed, by the 15 Α 16 cardiologist? 17 Yes, sir. Q 18 Α Yes. That's where I'm going next. Do you have 19 a general understanding of the difference between an 20 unconfirmed and a confirmed EKG tracing with 21 reference to cardiology involvement? 22 Yes. 23 Α What's your general understanding of the 24 difference between unconfirmed and confirmed? 25

69 MARKHAM - BOTTAR 1 Unconfirmed is a cardiologist has not 2 looked at it and confirmed it. Confirmed is that 3 they have. 4 Do you have a general understanding of 5 what a cardiologist confirms when they confirm an 6 EKG? 7 My understanding is within 24 hours they 8 typically will -- it's not always a cardiologist 9 doing the confirmation, it's somebody who is 10 certified to read EKGs, sometimes they're 11 internists. Yes, they're looking at the EKG and 12 writing what their reading is. 13 Was there a report generated for the EKG 14 Q 15 performed on the 6th? 16 By cardiology? Yes, sir. 17 Q Yes, there was. 18 Α Does the report provide any information 19 0 from a cardiologist about findings for the EKG? 20 21 Α Yes. What does it provide for findings? 22 Q The cardiologist's opinion of the EKG. 23 Α

Where is that recorded on the confirmed

24

25

Q

EKG?

70 MARKHAM - BOTTAR 1 2 That would be up at the top, in the Α 3 middle. In the lines beneath 06 Feb 2012? Q 4 5 Α Correct. From your perspective, all four lines of 6 Q 7 the all-caps text? Α Yes. 8 What is sinus bradycardia with marked 9 sinus arrhythmia? 10 Sinus arrhythmia is a pattern you see just 11 related to breathing, of no clinical significance. 12 Sinus bradycardia means it's a sinus rhythm 13 triggered through the process and it's slower than 14 60 beats a minute. 15 16 Q Was the EKG interpreted as outside of 17 normal limits? Let me fix that. Was the EKG 18 interpreted by a physician other than you as outside of normal limits? 19 20 Α Yes. Did you interpret the EKG before you had 21 22 the confirmed copy? 23 I probably never even saw the confirmed Α 24 copy. 25 Fair enough. Do you agree with the Q

71 1 MARKHAM - BOTTAR findings on the confirmed copy? 2 3 Α Yes. 4 You have training in the interpretation of EKG tracings, correct? 5 6 Α Yes. 7 0 You can identify the QPRST components of 8 the test? 9 PQRST, yes. Α 10 Q There you go. The copy that you reviewed, 11 did you place any ink? 12 Α Yes. 13 What did you place on the copy that you Q reviewed? 14 15 Α My initials, JM, the time 13:30, and NAD. 16 What does NAD mean to you? Q 17 No acute disease. Α 18 On the copy that you reviewed, was the Q text "sinus bradycardia with marked sinus 19 20 arrhythmia" nonspecific ST- and T-waves abnormality 21 abnormal ECG, was it on the copy that you signed? 22 Α Yes. 23 Do you agree with that information? Q 24 Α Yes. 25 Q Where did that information come from, if

72 1 MARKHAM - BOTTAR 2 you know? It's generated by the EKG computer. 3 Α What was the significance, if any, of the 4 Q nonspecific ST- and T-wave abnormality? 5 Well, I was aware of it. 6 Α 7 Q What was the significance, if any, of it to you on February 6th, 2012? 8 9 My reading of the EKG was there was no acute process here, so I read it as nonacute 10 11 process. 12 Was it outside of normal limits? Q 13 Α Yes. 14 Did you share that information with Q 15 Mr. Fitzgerald on February 6th? 16 I don't recall what I spoke to him about. Α 17 Can a nonspecific ST- and T-wave 18 abnormality be a sign or symptom of symptomatic coronary artery disease? 19 20 Yes. Α 21 Can nonspecific ST- and T-wave 22 abnormalities be a sign or symptom of myocardial 23 ischemia? 24 Α Yes. 25 When Mr. Fitzgerald was in the Emergency Q

73 MARKHAM - BOTTAR 1 2 Department on February 6th, did you order a 3 cardiology consult? No, I did not. 4 5 Did you request that a cardiologist Q interpret the results of the EKG while Mr. 6 7 Fitzgerald was in the Emergency Department on February 6th? 8 9 Α No. 10 Q On February 6th, 2012, did Mr. Fitzgerald 11 have any cardiac risk factors in his history? 12 Α Yes. 13 What were they? Q He's a male. Family history. I 14 15 believe -- I would think his blood pressure was 16 slightly high. I don't recall if he was a smoker or 17 not. I would have to look in the record. 18 Did you discuss with Mr. Fitzgerald while 19 he was in the Emergency Department his cardiac risk 20 factors? 21 I don't recall what I spoke to him about. 22 Do good and accepted standards of practice 23 require you to discuss with Mr. Fitzgerald his 24 cardiac risk factors while he was in the Emergency 25 Department?

## MARKHAM - BOTTAR

A I would have discussed with him the -- my thoughts on what his symptoms were that brought him there.

Q Slightly different question with respect to cardiac risk factors. Did good and accepted standards of practice require you to discuss with him his cardiac risk factors in the Emergency Department?

A I don't know what the answer to that question is.

Q Okay. What do good and accepted standards of practice require, if anything, while Mr. Fitzgerald was in the Emergency Department in terms of relaying information to him about the results of the tests and labs you ordered for him that day?

A Accepted standards would be to discuss with him the findings I have related to his presented complaint, which to me was chest tightness, syncope, shortness of breath with exertion, going in and out of cold weather, his bronchospasm, and his clinical finding of dehydration.

Q The clinical finding you reference for

75 MARKHAM - BOTTAR 1 dehydration, is that something that the labs told 2 3 you? I don't recall specifically what triggered 4 that. I'll look at the labs. No, it didn't come 5 from the labs. 6 7 How do you diagnose dehydration 8 clinically? Dry mouth, dry lips, skin turgor. 9 do the testing, we can sometimes get orthostatic 10 drop in blood pressure and orthostatic elevation in 11 heart rate. 12 Are there findings recorded in the record 13 Q consistent with clinical dehydration? 14 15 Α Yes. 16 Okay. What --Q 17 I'm sorry. Was that a history of a Α problem or a physical finding? 18 Physical finding. Clinical finding. 19 0 No physical or clinical findings. 20 Α Is there information in there about 21 Q dehydration in some regard? 22 23 Α Yes. Did it come from the patient? 24 0 It came as part of my history of present 25 Α

76 1 MARKHAM - BOTTAR 2 illness. 3 What was the -- withdrawn. You diagnosed Q 4 Mr. Fitzgerald with syncope vasovagal, yes? 5 Yes. Α 6 Q One of your diagnoses? 7 Α Yes. 8 Did you have a differential for the Q 9 syncope diagnosis? 10 Α Yes. 11 What was your differential? Q 12 My differential for all syncopes would be cardiac event, dehydration, pain triggering the 13 14 vasovagal response. 15 Q Did you rule out a cardiac event as a potential etiology for the syncope? 16 17 Not completely. Α What time was Mr. Fitzgerald discharged 18 0 from St. Joe's? 19 I don't see a nurse's note that shows what 20 21 time they actually discharged the patient. It shows 22 when the discharge instructions were printed out. 23 What time were the discharge instructions Q 24 printed? 25 15:47. Α

77 MARKHAM - BOTTAR 1 2 Does discharge typically follow printing 0 3 the discharge instructions? Yes. 4 Α 5 After your first bedside with Mr. Fitzgerald on the 6th and prior to discharge, did 6 7 you see him again? I don't recall. 8 9 Did you evaluate him as part of the 10 creation of the discharge instructions? 11 I don't recall my interaction with him. 12 Who chose or selected the discharge 13 instructions for Mr. Fitzgerald? I did. 14 Α 15 And how do you do that generally, is there 16 a computer with drop-downs --17 Yes. Α -- or a search box? You tell me. 18 Q 19 On the computer, we go to disposition and I pick admit or discharge, and then I put in the 20 21 diagnoses, and then those diagnoses will give up a 22 list of choices for discharge instructions based on 23 those diagnoses, or I can call them up specifically, 24 and then I click on those, and that's entered into 25 the record.

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1 MARKHAM - BOTTAR 2 Q At the time of discharge, did Mr. 3 Fitzgerald report any improvement in his chest tightness following the treatments administered? 4 I don't recall my interaction with him. 5 Α 6 Q Did Mr. Fitzgerald have chest pain at the 7 time of discharge? I don't recall my interaction with him. 8 9 Q Can you tell from the notes? 10 Progress note at 15:43, patient is feeling 11 much better -- much better after 20 liters of normal 12 saline, breathing easier after the DuoNeb, and then 13 discharge patient with MDI spacer and prednisone, directed to drink lots of fluids. Discuss with him 14 effect of caffeine, which can be a dehydrating 15 16 drink. So that progress note indicates that I did speak with him and re-evaluate him before discharge. 17 18 Other than what is recorded, do you have a 19 memory of your interaction with Mr. Fitzgerald at or about the time of discharge? 20 21 Α No. 22 Did you consider admitting Mr. Fitzgerald Q 23 to the hospital for surveilance? I don't recall what I considered. 24 25 Did you consider ordering a stress echo 0

79 1 MARKHAM - BOTTAR 2 for Mr. Fitzgerald prior to discharge? 3 No, not from the Emergency Department. Α What is the Westside clinic? 4 Q 5 It's a St. Joe's clinic. It's a doctors' Α office. 6 7 Did you refer Mr. Fitzgerald to the Westside clinic? 8 I believe I did. 9 10 Separate from the record, do you have a 11 memory of referring him? 12 I do not. Α 13 Was he a patient of the Westside clinic Q 14 prior to February 6th, 2012? 15 I don't think he was. Α 16 Q Why did you select the Westside clinic for him? 17 18 Α We have two -- at that time we had two 19 primary care offices that accepted ED follow-up visits, and they agreed -- they have agreed to see 20 21 patients we refer to them within two to three days, and Westside was one of those. 22 23 Was Mr. Fitzgerald given anything in print Q 24 at the end of his February 6th? 25 MS. WILLIAMS: Objection. Go ahead

80 MARKHAM - BOTTAR 1 2 and answer. Was he given any papers? 3 Q I didn't witness that. 4 Α 5 Q Did you give him any papers? Α I did not. 6 7 In the record there are a couple of pages, Q I think three, that follow the nine pages of 8 9 treatment notes, they say, "SJH ED Summary" at the 10 bottom. 11 Α Uh-huh. If I could get you there. 12 Q 13 Α Okay. 14 Do you have those three? Q 15 Α Yes. 16 Q About a third of the way down, it 17 provides, "This note is to communicate information 18 regarding your patient's visit to St. Joe's Hospital Health Center Emergency Department." My question 19 20 for you is, was this transmitted to someone 21 somewhere? 22 MS. WILLIAMS: Objection. 23 MS. HAYES: Objection. Form. 24 I'm not part of that process. I can't say 25 that it was or was not.

## MARKHAM - BOTTAR

Q Did you participate in the creation of these three pages?

A This looks like it's an automatic computerized summary of the visit.

Q What does that mean to you, if anything, about whether you participated in the information on these three pages?

A Well, it took the information that I obtained from my history and physical and incorporated -- and imported it into this particular document.

Q Can we agree that the information you obtained in your history and physical is different than the information that Mr. Donahue obtained in his history from Mr. Fitzgerald?

A The verbiage is different. I don't know that the information is different.

Q Does your note provide any information about the duration of Mr. Fitzgerald's complaint of chest pain?

A My note doesn't document that he complained to me of chest pain. It documents he has chief complaint of chest pain. And when I clarified what that meant with him, he called it chest

82 MARKHAM - BOTTAR 1 tightness to me. That's the difference. 2 The words chest tightness, did you use 3 Q quotes around those in your notes? 4 I don't see any quotes in my notes. 5 The use of the word chest tightness was a 6 Q decision that you made following your conversation 7 8 with Mr. Fitzgerald? MS. WILLIAMS: Objection. 9 10 Q You can answer. 11 Α Yes. Use of those words, was it in a simulation 12 Q or digestion of information that he gave to you? 13 MS. WILLIAMS: Objection. Go ahead 14 15 and answer. 16 THE WITNESS: I'm sorry? MS. WILLIAMS: Go ahead and answer. 17 Yeah, part of my responsibility is to 18 Α clarify what patient's complaints mean. 19 After February 6th -- after discharge on 20 21 February 6th, did you have any additional contact 22 with Mr. Fitzgerald? 23 Α Not to my knowledge. Did anyone contact you and discuss 24 Q Mr. Fitzgerald after February 6th, 2012? 25

```
83
                       MARKHAM - BOTTAR
 1
 2
               Not to my knowledge.
         Α
 3
               At some point in time, did you become
         Q
    aware of his death?
 4
 5
         Α
               Yes.
               How did you learn of his death?
 6
 7
               I don't recall specifically. I think I
         Α
    may have been notified by my insurer.
 8
9
               Did you discuss Mr. Fitzgerald in any way
    with anyone performing the autopsy?
10
11
         Α
               No.
                    MR. BOTTAR: That's all I have.
12
13
               Thank you.
                    MS. HAYES: I have nothing.
14
15
                    MR. LARABY: I have no questions.
16
                    MS. LANGAN: I have nothing.
17
                    (Whereupon, the proceedings concluded
18
               at 11:48 a.m.)
19
20
21
22
23
24
25
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## CERTIFICATION

I, Annette S. Potter, a Certified Court
Reporter and Notary Public in and for the State of
New York, do hereby certify that the within-named
witness personally appeared before me at the time
and place herein set out, and after having been duly
sworn by me, according to law, was examined by
counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true and accurate record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 7th day of April, 2016.

Annette S. Potter Court Reporter

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